IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.3991 of 2007
& M.P.Nos.1 & 2 of 2007

1. A. Govindarajan
2. Arjuna Naicker
3. Vijayalakshmi
4. Ravi @ Gnanaveeran
5. Narayanan
6. Shymala
7. Thoppaisamy .. Petitioners/Accused

Vs.

The Inspector of Police
W-5, All Women Police Station,
Chennai. - 600 040.
(Crime No.15 f 2005) .. Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to the criminal proceedings in C.C.No.18437 of 2005 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai - 8 and quash the same.

For Petitioners : Mr.R.Y.George Williams
For Respondent : Mr.P.Kumaresan
Additional Public Prosecutor

O R D E R

The learned counsel for the petitioner submits that the petitioners have come forward with this petition seeking the relief of quashing the proceedings initiated against them for the alleged offences under Sections 323, 406 and 498-A I.P.C. r/w 34 I.P.C. and Section 4 of Dowry Prohibition Act.

2. The learned counsel for the petitioner submits that even on an earlier occasion the petitioners moved a petition for quashing the proceedings at the stage of F.I.R. This Court dismissed such petition in Crl.O.P.No.18381 of 2005 by the order dated 18.08.2005 holding that it is for the petitioners to raise all the points at the time of trial and the points are to be considered and decided only after recording evidence. The learned counsel now submitted that so far, five witnesses have been examined in this case and four more witnesses yet to be

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examined. It is contended by the learned counsel for the petitioners that even as per the evidence of five witnesses recorded, there is absolutely no implication of these petitioners in their depositions. The learned counsel further submitted that the proceedings initiated by the de-facto complainant pending against the petitioners is liable to be quashed.

3. Per contra, the learned Additional Public Prosecutor submitted that so far, the prosecution examined five witnesses and the witnesses implicated the petitioners herein and the prosecution is going to examine four more witnesses to substantiate its case. It is submitted by the learned Additional Public Prosecutor that having faced the trial and having cross-examined witnesses, it is not open to the petitioner to seek the relief of quashing the proceedings at this stage.

4. I have carefully considered the rival contentions put forward by either side and also perused the materials available on record.

5. It is fairly submitted by the learned counsel for the petitioner that even on earlier an occasion when the petitioners moved a petition for quashing the proceedings at the F.I.R. stage, this Court clearly observed while dismissing their petition that, the points raised by the petitioners were to be considered only after recording the evidence at the appropriate time by the Trial Court. Now, it is not disputed by both sides that the prosecution examined so far five witnesses and the points pointed out by the learned counsel for the petitioners are relating to the appreciation of evidence and as such those points cannot be considered at this stage for quashing the proceedings.

6. The Hon'ble Supreme Court of India has held in AMAR CHAND V. SHANTI BOSE reported in AIR 1973 SC 799 that,

> "Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

7. It is also held by the Apex Court in yet another decision in STATE OF DELHI V. GYAN DEVI reported in 2000 SCC (Cri.) 1486 that,

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" .... The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Sections 304/34 IPC framed against the accused-Respondents 1 and 2 was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 CrPC is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable."

8. Therefore, in view of the settled principle of law laid down by the Apex Court, as per the decisions cited supra, this court cannot exercise the power under Section 482 of Cr.P.C. to quash the proceedings at this stage, viz., after the examination of five witnesses and further all the points raised by the learned counsel for the petitioners has to be raised only after the conclusion of the trial before the learned Trial Judge. It is open to the petitioners to raise all the points at that time.

9. With these observation, this petition is dismissed. However, the learned Trial Judge is directed to expedite the trial as expeditiously as possible and more particularly before 12.04.2007.

Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

gg

To

1. The Chief Metropolitan Magistrate,
   Egmore, Chennai - 8

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2. The Inspector of Police
   W-5, All Women Police Station,
   Chennai. - 600 040.

3. The Public Prosecutor,
   Madras High Court,
   Madras.

1 cc To Mr.R.Y George Williams, Advocate, SR.9691.

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MJ(CO)
RVL 05.03.2007

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